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**VIRGINIA BOARD OF MEDICINE
EXECUTIVE COMMITTEE**

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MINUTES

AUGUST 2, 2002

Harry C. Beaver, M.D., Chair, called the meeting of the Executive Committee to order at 8:00 a.m., at the Department of Health Professions (“DHP”).

MEMBERS PRESENT: Harry C. Beaver, M.D., Chair
J. Kirkwood Allen, Citizen Member
Cheryl Jordan, M.D.
Robert P. Nirschl, M.D.
Dianne L. Reynolds-Cane, M.D.
Jerry R. Willis, DC

MEMBERS ABSENT: Kenneth J. Walker, M.D.

STAFF PRESENT: William L. Harp, M.D., Executive Director
Ola Powers, Deputy Executive Director of Licensure
Kate Nobsch, Deputy Executive Director of Physician Profile
Robert Nebiker, Director, DHP
Gail Jaspen, Chief Deputy Director
Elaine Yeatts, Senior Regulatory Analyst
Roscoe Roberts, Assistant Attorney General
Deborah A. Ordiway, Recording Secretary

GUESTS PRESENT: Jane Hickey, Chief Attorney General; Robert W. Downs, MD; Frank Ferguson, AAG, Deputy of Health, Education and Social Services Division; Monty Tucker, AAG, Deputy of the Government Affairs Division; and Jeff Buthe, Medical Society of Virginia

ADOPTION OF AGENDA

Dr. Willis moved to adopt the amended agenda. The motion was seconded and carried unanimously.

PUBLIC COMMENT ON AGENDA ITEMS

Robert W. Downs, MD, noted his presence for the topic of bone densitometry.

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APPROVAL OF MINUTES – APRIL 5, 2002 MEETING

Mr. Allen moved to approve the minutes of the Executive Committee dated April 5, 2002. The motion was seconded and carried unanimously.

#1 Chart of regulatory actions – Ms. Yeatts

Ms. Yeatts distributed a copy of the Board of Medicine's regulatory activity.

#2 Adoption of proposed regulations for 18 VAC 85-20 – Ms. Yeatts

Ms. Yeatts covered the proposed changes to 18 VAC 85-20.

Dr. Willis moved to accept the proposed General Regulations. The motion was seconded and carried unanimously.

#3 Adoption of final regulations for 18 VAC 85-80, Regulations Governing the Practice of Occupational Therapy – Ms. Yeatts

Ms. Yeatts stated that the Virginia Occupational Therapy Association is concerned about the delegation to unlicensed occupational therapists. They were concerned that the delegation rules might be too restrictive and that in some cases it might not be narrow enough which would allow certain tasks to be delegated to occupational therapy aides versus to a certified occupational therapist assistant. The American Occupational Therapy Association is concerned about the lack of distinction between COTAs and the aides who are unlicensed persons. There is no statutory authority to regulate COTAs.

The Advisory Board on Occupational Therapy recommended that the board amend the proposed regulations to insert 18 VAC 85-80-110(A)(2) the words "discretionary aspects of the". This section would read as follows: "An occupational therapist shall not delegate the discretionary aspects of the initial assessment, evaluation or development of a treatment plan for a patient to unlicensed occupational therapy personnel nor shall he delegate any task requiring a clinical decision or the knowledge, skills, and judgment of a licensed occupational therapist." It was also recommended that occupational therapist must assure that the task not require professional judgment and can be properly and safely performed by appropriately trained unlicensed occupational therapy personnel.

Dr. Nirschl moved to refer the issue of COTA licensure to the Legislative Committee. The motion was seconded and carried unanimously.

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Dr. Willis moved to adopt the final regulations, along with the above changes for 18 VAC 85-80-110. The motion was seconded and carried unanimously.

Dr. Willis moved to adopt the proposed board comments. The motion was seconded and carried unanimously.

#4 Adoption of final regulations for 18 VAC 85-101, Regulations Governing the Practice of Radiologic Technology – Ms. Yeatts

Ms. Yeatts stated there was one comment received from the Town Hall Internet. The Virginia Department of Health (VDH) inquired if personnel performing bone densitometry testing in licensed hospitals have to be licensed. The board responded to the VDH that if the machine registered by VDH for bone densitometry is operated by an employee of a licensed hospital, that person is exempt from the licensure requirement. Regardless of the location of the machine, the key factor is the employment of the person performing the X-ray.

Dr. Willis moved to add, where applicable in these regulations, the chiropractic profession. The motion was seconded and carried unanimously.

Dr. Willis moved for the adoption of the final regulations, along with the addition of the chiropractic profession where needed. The motion was seconded and carried unanimously.

Dr. Jordan moved to adopt the proposed board comments. The motion was seconded and carried unanimously.

#5 Attorney General Coverage

Mr. Ferguson stated that the attorney general's office would provide the same level of service to the board as they have done in the past and will make available personnel for our board meetings.

#6 Health Practitioners' Intervention Program request for proposals – Mr. Nebiker

Mr. Nebiker stated that proposals for the Health Practitioners' Intervention Program were contained in the agenda packet for informational purposes. Mr. Nebiker stated that a recommendation for a new contract would be presented at the full Board meeting on October 10, 2002.

#7 Norfolk *Virginian-Pilot* editorial and letter from Clarke Russ, MD – Dr. Harp

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Dr. Harp stated a copy of Dr. Russ' letter to the *Virginian-Pilot* was contained in the agenda packet for informational purposes.

#8 Practitioner information update – Ms. Nosbisch

Ms. Nosbisch stated that for July there was 42,866 hits on the website. Of those hits 198 were administrative log-ins, 3,623 were licensee log-ins and 39,045 from consumers.

Six notices have been mailed out for informal conferences that will be held August 15th in Fredericksburg. The informal conferences are for those licensees that renewed in January 2002 and have not complied with the request for information from March 26, 2001.

Ms. Nosbisch stated the licensees were given an option of either signing a consent order or appearing before an informal conference committee. The consent order includes findings of fact, conclusions of law, imposes censure and requires the licensee to complete the profile in 30 days.

Dr. Nirschl suggested spelling out the applicable sections of law in the consent order and also advise that the matter is being reported to the National Practitioners' Data Bank.

Dr. Jordan moved that a cover letter accompany the consent order that would explain the disciplinary process, our reporting requirements and list the adverse actions that could be taken. The motion was seconded.

Dr. Nirschl offered an amendment to Dr. Jordan's motion wherein the cover letter would accompany the initial notification letter instead of the consent order. Dr. Jordan was in agreement with this amendment. Ms. Nosbisch stated that this information could be incorporated into the initial notification. The motion carried with Mr. Allen opposed.

Dr. Jordan moved that when the board becomes aware of the fact that a physician has not reported a malpractice claim on their practitioner information profile that the board send a courtesy letter advising physicians they have to submit malpractice information within 30 days and to include a cover letter advising the practitioner what would happen if this information is not placed on the profile. The motion was seconded and carried unanimously.

Dr. Jordan moved to send out a courtesy letter to physicians when the board notices a discrepancy in the practitioner information profile and also the practitioner would be sent the language on the board's course of action. The motion was seconded and carried unanimously.

Mr. Allen moved to table further discussion on what the penalty will be for noncompliance. Mr. Allen then moved to withdraw his motion to table.

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The courtesy letter would remind licensees of the following:

1. Board of Medicine General Regulation 18 VAC 85-20-300 specifies that failure to comply may constitute unprofessional conduct and intentionally falsifying information shall constitute unprofessional conduct.
2. Noncompliance or intentional falsification of information will result in legal proceedings against the licensee.
3. In lieu of appearing before the Board, a licensee will be offered a Consent Order that provides for a Censure.
4. Failure to comply with the Consent Order will subject the licensee to further disciplinary action.
5. A Censure is a disciplinary action, and as such, must be reported by law to various data banks that may include the National Practitioner Databank and the Healthcare Integrity and Protection Databank. In addition, the Board of Medicine also routinely reports its actions to the Board Action Databank of the Federation of State Medical Boards and all licensed hospitals in the Commonwealth, posts them on the Practitioner Information website and publishes them in the Board's newsletter.
6. Disciplinary action may have adverse consequences for the licensee that extends beyond the posting of information.

#9 Meeting dates for 2003

Dr. Jordan moved to approve the 2003 meeting dates. The motion was seconded and carried unanimously.

#10 Executive Director's report – Dr. Harp

Dr. Harp stated that three new board members have been appointed. The podiatric member is Thomas B. Leecost, DPM; the citizen member is Reverend LaVert Taylor and from the 6th District is Malcolm L. Cothran, Jr., MD.

It was announced that the board workshop would be held here at the Richmond office on September 13-14, 2002. Laptop training would be conducted Friday night. Saturday would be a review of the disciplinary process and conduct of hearings.

Dr. Harp stated that according to the AMA guidelines it appeared that Category I or Category II credit could not be given for attending board meetings. However, Paul Mazmanian from Virginia Commonwealth University stated he could develop a personal continuing medical education plan for each doctor at a cost of \$120 per year.

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OTHER BUSINESS

Next Executive Committee Meeting: December 6, 2002, 6606 West Broad Street, Richmond, Virginia.

REVIEW OF CASES RECOMMENDED FOR CLOSURE

ADJOURNMENT

With no further business to discuss, the Executive Committee of the Board of Medicine was adjourned.

Harry C. Beaver, M.D.
Chair

William L. Harp, M.D.
Executive Director

Deborah A. Ordiway
Recording Secretary